



January 27, 2015

Robert deV. Frierson, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Docket No. R-1503, Application of Enhanced Prudential Standards and Reporting
Requirements to General Electric Capital Corporation

Dear Mr. Frierson:

The Society of Corporate Secretaries & Governance Professionals is a professional membership association of more than 3,200 corporate secretaries, in-house counsel, and other governance professionals who serve approximately 1,600 entities, including 1,200 public companies of almost every size and industry. Since the organization's founding in 1946, Society members have been responsible for supporting the work of corporate boards of directors and their committees and the executive management of their companies regarding corporate governance and disclosure. The Society welcomes the opportunity to comment on the Federal Reserve Board's Proposed Order that would apply enhanced prudential standards and reporting requirements to General Electric Capital Corporation ("GECC"), a wholly owned subsidiary of GE.¹

We are writing specifically with regard to the Proposed Order's governance requirement that 25% of GECC's directors (or two directors, whichever is more numerous) be what we refer to in this letter as "independent/independent directors": directors who are independent of the management of GECC and GE, and who are not independent "outside" non-management directors of GE. According to the Proposed Order, this requirement is "necessary to ensure that GECC's board of directors includes members who are independent of GE so that their attention is focused on the business operations and safety and soundness of GECC itself, *apart from the needs of its parent GE,*" and to mitigate "the potential conflict of interests in the relationship between GE and GECC."²

In our view, the Proposed Order's independent/independent director requirement is an intervention into corporate governance that is at odds with established state corporate law and the lines of accountability that companies should have in place as a matter of good governance practice. The notion that a director of a wholly owned subsidiary should focus on the

¹ See 79 Fed. Reg. 71,768.

² 79 Fed. Reg. at 71,778 (emphasis added).

subsidiary's interests "apart from the needs of" the corporate parent is contrary to longstanding governance principles and state law concerning the relationship between parent corporations and their wholly owned subsidiaries. The Proposed Order conflicts with one of the most basic principles of corporate governance: directors are accountable to their company's shareholders.³ In the context of a wholly owned subsidiary, a subsidiary director's duties run ultimately to the shareholders of the parent company.⁴

The reason for this alignment of accountability is clear: directors who are accountable to shareholders can exercise judgment and oversight that is independent from management—and the value of director independence has always been understood as value that derives from a director's independence *from management*. Directors are not themselves wholly unaccountable though. Their actions are aligned to the interests of the company, and ultimately to the company's shareholders, because the shareholders elect and may remove them from the board. The Proposed Order's independent/independent director requirement, which would require the appointment of directors focused on GECC "apart from the needs of its parent GE," would eliminate the shareholder oversight portion of this equation that is essential to good governance.

As professionals with extensive experience advising and working with boards of directors, we also think that requiring a company to elect independent/independent directors to its subsidiary board could diminish that board's effectiveness. While some regulated wholly owned subsidiaries do have directors who are independent/independent, we believe that the choice should be left to the parent company and sole shareholder to make the decision. A structure such as GECC has, where the parent company Risk Committee members serve as the Risk Committee of GECC, allows direct oversight by that Risk Committee of a substantial business line. Given the complexity of today's financial institutions, this could be a simple way to achieve transparency and accountability at the parent company level and ultimately to the shareholders of the parent company. Companies that have independent/independent directors have to create an additional process by which to "report up" to the parent company board. While we take no view on which is better, either choice can work. But it should be the parent company's choice.

We believe that adoption of the Proposed Order's independent/independent director requirement would set a harmful precedent for other companies that are federally regulated. The application of such a requirement would not only make it more difficult for subsidiary corporations to find qualified directors but would also complicate the ability of the directors on

³ See, e.g., *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 955 (Del. 1985) ("directors have a fiduciary duty to act in the best interests of the corporation's stockholders"); *McMullin v. Beran*, 765 A.2d 910, 923 (Del. 2000) (directors owe "shareholders an uncompromising duty of loyalty").

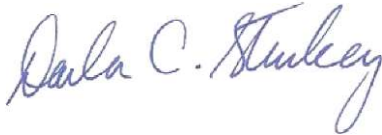
⁴ See, e.g., *Anadarko Petroleum Corp. v. Panhandle E. Corp.*, 545 A.2d 1171, 1174 (Del. 1988) ("[I]n a parent and wholly-owned subsidiary context, the directors of the subsidiary are obligated only to manage the affairs of the subsidiary in the best interests of the parent and its shareholders."); see also *In re Teleglobe Commc'ns Corp.*, 493 F.3d 345, 366-67 (3d Cir. 2007) ("Delaware courts have recognized that parents and their wholly owned subsidiaries have the *same* interests because all of the duties owed to the subsidiaries flow back up to the parent.") (emphasis added).

such a board to discharge their fiduciary responsibilities to the parent company and its shareholders.

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We appreciate the opportunity to comment on the Proposed Order, and we would be glad to discuss our concerns further or respond to any questions you may have.

Sincerely,

A handwritten signature in blue ink that reads "Darla C. Stuckey". The signature is written in a cursive, flowing style.

Darla C. Stuckey
President & CEO
Society of Corporate Secretaries and Governance Professionals